

Hearing that your child has been excluded from school can come as a huge shock. This guide offers information on legal responsibilities, necessary actions and how you can look to the future.

It is recognised that children and young people with SEND are more likely to be excluded from school than their peers but there is still some confusion around the way that these exclusions are used and the legalities of a child or young person not being able to attend school. Exclusion is the most extreme sanction available to a head teacher.

The Facts

Legally a child is either in school full-time or they are excluded from school. There are only **two** types of exclusion which are lawful: **fixed-period** and **permanent**—which can be defined as follows:

Suspension

An exclusion for a specified number of school days. The pupil can return at the end of the period

Permanent

A pupil is unable to return to that school unless their exclusion can be overturned on appeal.

Only the head teacher of a school, the teacher in charge of a pupil referral unit or the principal of an academy can exclude a pupil. Any exclusion of a pupil, even for a short period of time, must be formally recorded.

Informal or unofficial exclusions, such as sending pupils home to calm down or because their LSA is absent, are **unlawful or illegal exclusions** even if they occur with the agreement of parents or carers.

Some children and young people with SEND are excluded illegally. The following can be considered illegal /unlawful exclusions:

- When you are asked to take or keep your child at home without proper/formal notification
- Picking your child up from school early, at lunchtime, not coming in on certain days or only attending part-time because their school cannot meet the provision required for their educational needs. Before excluding a child with SEND, the school should look at what additional support is needed. If your child or young person has an EHCP then the school/ you should consider bringing forward the annual review or holding an emergency review.

- The law around exclusions can be found at:
<https://www.ipsea.org.uk/what-steps-does-the-school-have-to-take>
- Hampshire County Council:
<https://www.hants.gov.uk/educationandlearning/educationinclusionservice/exclusion>

My child has been excluded from school, how do I know if this is lawful?

IPSEA have produced an excellent resource pack which can help you to understand whether your child's 'exclusion' is unlawful. The pack works through different scenarios where young people have EHCP or where there is no additional support in place. It offers information on what should happen, the law, how to challenge exclusions and where you can find additional support:
<https://www.ipsea.org.uk/pages/category/exclusion-from-school> It might also be helpful to use IPSEA's Exclusion Checklist to track the responses to your questions and plan the next steps:
<https://www.ipsea.org.uk/if-you-have-an-ehc-plan>

IPSEA also offers an advice and support service where you can ask questions about your family's experience and find out about possible next steps. You need to book an appointment so that one of the trained advisors can get in touch with you and discuss your child's exclusion.
<https://www.ipsea.org.uk/advice-line>

Who can exclude a young person?

The Head teacher of a maintained school (Government funded), The teacher in charge of a pupil referral unit or A person acting in either of the above roles

What should the school do before considering exclusion?

School must ensure that an appropriate investigation has been carried out, consider all the evidence available, talk to the pupil to allow them to give their version of events. check whether the incident may have been provoked, for example by bullying or harassment and If necessary consult others, but not anyone who may later have a role in reviewing the Head teacher's decision

Independent Schools have separate exclusion procedures. The DFE (Department for Education) procedures do not apply. The grounds for exclusion at independent schools are generally similar to those at maintained schools but the range of legitimate grounds is wider and include parental breach of contract with the school, parents causing serious or repeated nuisance on school premises, serious disagreement with, or contravention of, the school's policies on social inclusion, diversity or equality or failure of the pupil to meet the required academic standards.

Can my child be informally excluded so that this does not appear on their record?

Sometimes parents are told that the school can avoid recording an exclusion by managing it an informal way. This type of exclusion is not lawful and can lead to children missing out on education. The exclusion is not covered by the exclusion regulations so work may not be set and the formal processes do not have to be followed.

Internal Exclusion

Schools might use a system of internal exclusion to give a child time out or to remove them for disciplinary reasons. Although this exclusion might be a formal part of the school's behaviour policy it is not considered to be a legal exclusion. This *should not* become a long term solution and *must not* be used to fast track a child to an official exclusion.

Informal Exclusion

In some cases parents are asked to remove their child from school for a period of time, schools might suggest this type of informal exclusion to give the child time 'to cool off' or to avoid further incidents. Any exclusion must be recorded and follow the correct procedure so informal exclusions, even when agreed with the parent, are unlawful.

Part-Time Timetables

It is important to remember that placing on a part-time timetable, or asking a parent to collect them at lunchtime, for example will also be a form of exclusion and if a school is not allowing a child to attend school for a full school day, then they are, in law, excluding them. The only circumstances in which a child should be offered a reduced timetable are those where the child cannot attend school full-time for medical reasons, for example. In those circumstances, if it would not be in the child's best interests to have full-time education, for a reason relating to their medical condition, then a part-time timetable might be appropriate. In all other circumstances, if a child is able to attend school, but the Head teacher is refusing to let them, then this will be an exclusion and should be registered as one.

My child has special educational needs, does this make a difference?

Schools have a statutory duty under the Equality Act 2010 not to discriminate against pupils on the basis of protected characteristics, such as disability and should give particular consideration to the fair treatment of pupils who are vulnerable to exclusion. Children with SEND would be considered as a vulnerable group.

Where a child has an EHCP head teachers should do everything possible to avoid exclusion. One of the options is to call a an emergency / early annual review so that needs can be re-assessed, provision can be altered or placement discussions can be started.

School have concerns about my child's behaviour and I am worried that might lead to an exclusion.

For some children their behaviour can be directly linked to their SEND. This could include impulsive behaviours, inattention, anxiety, mental health issues, not understanding rules/ consequences, communication difficulties, low self-esteem and many other types of behaviour. There might also be concerns that the provision in place to support the child is not addressing all of their needs.

There are certain questions that should be asked if a child is displaying disruptive behaviour that is as a result of their Special Educational Need or Disability (SEND).

- Is the school engaging proactively with you to find ways to support behaviour?
- Is the appropriate provision in place?
- Would it be useful to consider a multi-agency assessment?
- Has the school taken account of their statutory duties in relation to SEND? - SEND Code of Practice
- Has the school consulted with the local authority /other agencies to try and reduce the risk of exclusion?

It is unlawful to exclude a disabled pupil for a reason related to their disability without justification. When considering whether or not it is appropriate to exclude a pupil who may be disabled within the meaning of the Disability Discrimination Act 1995, head teachers/teachers in charge should consider four questions:

1. **Is the pupil disabled?**
2. **Is the exclusion for a reason related to the pupil's disability?**
3. **Would another pupil, to whom the reason did not apply, be excluded?**
4. **Can the exclusion be justified?**

An exclusion of a disabled pupil for a reason related to their disability can only be justified if there is a 'material' and 'substantial' reason for it. Maintaining order and discipline in the school may be a material and substantial reason. However, it may not be possible to justify the less favourable treatment if there are reasonable adjustments that should have been made but were not. Reasonable adjustments could include developing strategies to prevent or manage the pupil's behaviour; drawing on external advice on effective approaches with a pupil and staff training.

If reasonable steps could have been taken but were not, it may not be possible to justify the pupil's exclusion. If reasonable steps were taken, but the incident still happened, then the school is likely to be able to justify the exclusion.

When can exclusion be used?

The Government guidance says that your child should only have been excluded: in response to serious or persistent breaches of the school's behaviour policy **and** where allowing him or her to remain in school would seriously harm the education and welfare of your child or others in the school.

Exclusion from maintained schools, Academies and Pupil Referral Units in England”

It is unlawful to exclude or to increase the severity of an exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment / ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated. Pupils who repeatedly disobey their teachers' academic instructions could, however, be subject to exclusion.'

Exclusion from maintained schools, Academies and pupil referral units in England – June 2012 paragraph 12.

Can I use this exclusion to make a positive change for my child?

For some children exclusion or even being identified as being at risk of exclusion can actually help to turn things around. It is possible that what can appear to be a challenging situation could be the chance to make positive changes that may lead to more appropriate provision, additional support, greater understanding or a change of placement.

My child's needs are not being addressed, what can I do?

We would always recommend starting discussions with the school if you have concerns about any unmet SEN. The school should be able to tell you how they are working with your child and if they feel that additional support might be needed. If you feel that your child needs to have more support than the school is able to provide then you can contact the local authority and ask them to carry out a statutory assessment of need.

My child has an EHCP but it doesn't seem to provide the right level of support, what can I do?

If you feel that your child's EHC Plan is not addressing their needs or that their needs have changed then you can request an early annual review. You may also be concerned that a return to the current school after a suspension is not in your child's best interest or perhaps the risk of exclusion has led to you questioning the current placement. Calling an early annual review will give you the opportunity to discuss this. There is more information here - <https://www.ipsea.org.uk/changing-an-ehc-plan>

My child has been excluded for a suspension period, what happens now?

A Suspension means that a child can't attend school for a fixed period of time. Head teachers **must not** exclude for an indefinite number of days. An individual suspension for an amount of days:

- Should be for the shortest time necessary. Exclusions of more than a day or two make it more difficult for the pupil to reintegrate back into the school afterwards.
- Must not exceed 45 school days in an academic year either as a single exclusion or a number of shorter exclusions added together.
- May be at lunchtime but not for a long period of time as other ways of addressing the problem should be worked out. If your child has free meals, the school must make other arrangements such as a packed lunch.
- May be extended or made permanent—but only in exceptional circumstances. If this happens, the head teacher must write to you again giving the reasons for the change.

The head teacher or his/her nominated representative will let you know immediately (generally by telephone) about the length of the suspension and the reason for it. This will be followed up immediately in a letter which includes:

- The reason for the Exclusion
- Length and time of the exclusion and date for return (if a suspension)
- How your child can continue their education – schools should arrange for setting and marking work for the pupil to do during the first five days of the exclusion, (it is the parents' responsibility to ensure that work sent home is completed and returned to school);
- Details of how your child should continue their education – head teachers must arrange suitable appropriate full time education from the sixth day of the exclusion, if the exclusion is a Suspension of 6 or more days.
- Your right to state your case to the Governors' Discipline Committee and how your child may be involved in this; who you should contact
- The phone numbers of the Inclusion Team at the local Children's Services office who can advise you;
- Your rights under the Equality Act;
- The phone number of Coram Children's Legal Centre helpline – 08088 020 008.

School work will be set by the school during the first five days of the exclusion and it is your responsibility to ensure that this work is completed and returned to the school.

In addition to this, during the first five days of the exclusion you have a duty to ensure that your child is not present in a public place during school hours unless there is reasonable justification for this. You may receive a penalty notice from the Local Authority if this happens.

What should happen when my child goes back to school?

Some children can find it difficult going back to school after a Suspension. Your child may have missed work and you may both be worried about the possibility of further periods of exclusion. Schools should have a plan for reintegrating pupils after exclusion. In some cases there will be a reintegration meeting but this is not a legal requirement. If you will be having a reintegration meeting at your child's school it would be useful to consider how you, your child and the school can work together to avoid further exclusion in the future.

When my son returned to school after a Suspension we decided to have more regular meetings with his teacher and the school SENCO. This allowed us to address any issues quickly and recognise when new interventions were needed.

Pastoral Support

In some schools they will put into place a plan that addresses behaviour and communicates the support that your child will receive in the aim of avoiding future exclusions. This plan may include mentoring, counselling or support from a behaviour specialist. It is helpful if you and your child's school are able to work together on these targets so that any learning is reinforced at home. If your child is anxious about returning to school then pastoral support might be a key part of the integration plan. Some children worry about the response of other children when they return so may appreciate being able to talk through these concerns with someone at school.

Review

It may also be necessary to review the support that is provided in your child's EHCP to ensure that they are receiving the correct level of support and that the plan reflects their needs accurately. You may want to request an early review, an assessment from an Educational Psychologist or input from outside agencies. It is important that the SENCO is involved in these discussions. IPSEA has template letters that you can use to make this type of request which can be found here -

<https://www.ipsea.org.uk/asking-for-a-re-assessment-of-a-child-or-young-persons-needs>

Preventing Further Exclusions

- The school have a legal duty to ensure that educational provision is appropriate for children with SEND. They should try everything possible to avoid exclusion. This could include:
- asking the local authority for a statutory assessment of the pupil's SEN
- requesting an early/emergency annual review
- seeking advice and support from the local authority and other professionals
- training staff
- arranging additional or different support
- making 'reasonable adjustments' to policies and practices
- considering a multi-agency assessment

My child has been permanently excluded—what will happen next?

If your child is permanently excluded you must be notified in writing. The letter must tell you: the reason for exclusion, the fact that it is permanent, about your right to put your views in writing to the governing body and about your right to go to a meeting of the governing body and put your views in person. If your child is of compulsory school age you will also be told about your responsibilities during the first five days.

The First Five Days

Your child is not allowed onto school premises but the school is still responsible for setting work during this period. The work should be achievable at home and it is your responsibility to ensure it is done and returned to the school. You are also responsible for ensuring that your child is not in a public place during school hours for the first 5 days. If this does happen you may receive a fine from the local authority.

Day Six and Beyond

From day six the local authority is responsible for providing your child with a full time education. This might take place at a pupil referral unit or another alternative setting. If your child has an EHCP then the provision must meet the child's needs as set out in the plan. During this time an assessment of your child's long term needs will take place and the local authority will be working towards preparing your child for their return to a local school.

The Future

When your child is thought to be ready to return to school this will be discussed with you and you will be asked about the schools you would like to consider. Your child's case will then be discussed at a placement panel and they will allocate a place at a new school. If your child has an EHCP then arrangements will need to be made for the new school to be named in this. You have a right of appeal if you disagree with their choice and you want your child to attend a different school.

What if I don't agree with the exclusion? Appeals, complaints, resources and support

Unfortunately a considerable number of students with SEND are excluded from schools each year. Schools should only ever use exclusion as a last resort where the child has additional needs, they should always seek to find ways to support the child and avoid them being excluded. If your child has been excluded then you have the right to appeal this decision. This might seem like a daunting process so the IPSEA information sheets are a very good starting point and can help you to gather all the information that you might need. <https://www.ipsea.org.uk/permanent-exclusions>

Request a meeting with the Head Teacher

This meeting will allow you to discuss your concerns and ask him/her to reconsider the exclusion.



Write a letter to the Governors

The letter needs to be addressed to Clerk of the Discipline Committee and needs to be sent as soon as possible after receiving the letter about the exclusion.

What must the governors do?

- The school governors **must** review certain exclusions and consider any representations about an exclusion made by you.
- **Suspensions 1-5 days:** the governors must consider your representations but do not have to meet. They are unable to shorten the length of the exclusion but can place a note of their findings on your child's file.
- **Suspensions 6-15 days in a term:** the governors must hold a meeting if you request one.
- **Suspensions of more than 15 days in a term:** the governors must hold a review meeting whether you request this or not. You and your child will be invited to this meeting.
- **Permanent Exclusions:** the governors must hold a review meeting whether you request this or not. You and your child will be invited to the meeting.

What should I include in my written representations?

Parents have the right to make written representations to the governing body. It can really help to organise your thoughts in this way even if you are going to be attending the meeting in person. You should include;

- Some information about your child and their needs. Including how these impact on their behaviour.
- Why you believe that the exclusion is unlawful or unfair. You can refer to the Exclusion Guidance at this point— <https://www.gov.uk/government/publications/school-exclusion> IPSEA can help you to pull out the correct statements.
- You can also talk about what was going well for your child, any changes in the child's life that might be having an impact on them at school or any special circumstances.
- Whether you believe that your child has been treated in a discriminatory way.

What will happen before the meeting?

The Clerk to the committee will write to you to inform you when the meeting will take place. They will also send you copies of all the paperwork that will be discussed at the meeting. This might include:

- Witness statements and your child's version of events, if appropriate
- A behaviour diary and academic reports
- Information on your child's special educational needs. If there is an EHCP this will include your child's difficulties, the school's strategies, support and reviews, and information on other services involved
- A pastoral support programme which may include the involvement of other agencies for pupils who have been, or are at risk of being, permanently excluded
- Attendance records
- Any other relevant documentation

Who will attend the meeting?

You and your child will be invited to attend the meeting but you might decide that it is not appropriate for your child to attend. Some children welcome the opportunity to present their case but for some young people this might not be possible or might increase their anxiety around the exclusion. You may want to think about taking a friend or advocate/adviser to the meeting with you if the support would be helpful. After each person has presented their case there will be an opportunity for you to ask questions.

The following people will also attend the meeting:

- The governors, one of whom will act as Chair of the Committee
- A Clerk to take notes and can advise on procedure
- A Local Authority representative will attend for permanent exclusions and Suspensions of 16 days or more - the LA officer is not involved with the decision making process and is only present to give the LA's view on the appropriateness of the exclusion.
- The head teacher and/or a senior member of staff
- The parents/carers - think about taking a friend or advocate/adviser to the meeting with you if the support would be helpful; Parent Voice can help you to find a suitable advocate
- Witnesses may be called to give evidence but do not normally remain for the full meeting

What happens at the meeting?

At the meeting everyone will have a chance to present their thoughts and you will have the opportunity to listen to the statements from the school, other people who were involved and in the case of permanent exclusions the local authority. Once everyone has spoken the governors will discuss the information and review the decision. You will be notified of the governor's decision within one day.

The Discipline Committee's decision will be to: uphold the exclusion if it agrees with the head teacher's decision; or allow your child to return to school immediately or on an agreed date. This is officially called Reinstatement.

What happens after the meeting?

Following the decision from the Governors' Discipline Committee they will place their views and the head teacher's letter on your child's file. You can also ask for your views to be added.

Suspensions

There are no rights of appeal for Suspensions but if you believe that your child has a disability and has been discriminated against then you can make a claim under the **Equality Act to the First Tier Tribunal (SEND)**. The claim of discrimination should be made within 6 months of the date the child was excluded.

Permanent Exclusion

If the Governors' Discipline Committee agree with the permanent exclusion you will be given 15 days to decide whether or not you wish to request a review by an independent review panel. You need to make your request in writing to the named contact and include your reasons. The Clerk will then respond to you.

whether or not a school recognises that a pupil has special educational needs, all parents (or pupils if aged 18 or over) have the right to request the presence of a SEN expert at an independent review panel. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion; for example, whether the school acted reasonably in relation to its legal duties when excluding the pupil.

If you believe that your child has been discriminated against due to their disability please contact **The Equality Advisory Support Service** for support call: 0808 800 0082 or visit: <http://www.equalityadvisoryservice.com/>

What happens at the Independent Review?

The independent review must be held no later than 15 school days after your letter is received. The role of the panel is to review the governing body's decision not to reinstate your child. In reviewing the decision, the panel must consider the interests and circumstances of your child and the circumstances in which he/she was excluded and consider the interests of other pupils and people working at the school. You may still request a review, even if you do not wish your child to return to the school.

Top Tip: It is important that all communication is in writing so that you have a record and timeline of what has been said and by whom. If you have a phone conversation with your child's school or the local authority ask for this to be followed up in a letter or email. Alternatively you could do this yourself and ask them to reply so that you have their agreement that your email reflects the phone conversation. This information can help you to build a picture of what has happened and if the law has been followed.

The School Exclusion Project: <https://schoolexclusionproject.com/>

The School Exclusion Project provide free advocacy to help parents appeal against their child's permanent exclusion. They specialise in disability discrimination and cases where the child has special educational needs. They seek to do this by:

- Providing free advice to parents, carers and others who are concerned about exclusions
- Providing free representation at Governing Body hearings about permanent exclusions
- Providing free representation at Independent Review Panel hearings
- Providing free representation in the First-Tier Tribunal, where it is alleged that a permanent exclusion amounts to unlawful disability discrimination
- Developing links with other individuals and organisations concerned about school exclusions

Who else can help?

- ACE Education - <http://www.ace-ed.org.uk/publications/download-advice-booklets/fixed-period-exclusion>
- Coram Children's Legal Centre provide legal advice, information and representation for children and young people in all aspects of law including education. <http://childlawadvice.org.uk/>
- NAS - School Exclusion Service - <http://www.autism.org.uk/services/helplines/school-exclusions.aspx>
- SOS SEN - <http://www.sossen.org.uk/helpline.php>
- The School Exclusion Project - <https://schoolexclusionproject.com/>
- CAF - <http://www.cafamily.org.uk/advice-and-support/sen-national-advice-service/exclusion/>

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